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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 ERIC MICHAEL LIANG,

9 Plaintiff,

10 v.

11 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

12 Defendant.
13

CASE NO. C17-5508-MAT

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

14 Plaintiff Eric Michael Liang proceeds through counsel in his appeal of a final decision of
15 the Commissioner of the Social Security Administration (Commissioner). The Commissioner
16 denied Plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an
17 Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative
18 record (AR), and all memoranda of record, this matter is AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1980.¹ He has a high school diploma, and has worked as a
21 guest services representative, janitor, and petroleum supply specialist in the U.S. Army. (AR 229.)
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23 ¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 Plaintiff applied for DIB in June 2015. (AR 189-90.) That application was denied and
2 Plaintiff timely requested a hearing. (AR 129-31, 133-34, 138-39.)

3 On July 8, 2016, ALJ David Johnson held a hearing, taking testimony from Plaintiff, his
4 wife, and a vocational expert (VE). (AR 47-97.) On September 8, 2016, the ALJ issued a decision
5 finding Plaintiff not disabled. (AR 26-41.) Plaintiff timely appealed. The Appeals Council denied
6 Plaintiff's request for review on May 5, 2017 (AR 1-7), making the ALJ's decision the final
7 decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this
8 Court.

9 **JURISDICTION**

10 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

11 **DISCUSSION**

12 The Commissioner follows a five-step sequential evaluation process for determining
13 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
14 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not
15 engaged in substantial gainful activity since April 22, 2015, the alleged onset date. (AR 28.) At
16 step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ
17 found severe Plaintiff's post-traumatic stress disorder (PTSD), major depressive disorder, and left
18 ankle abnormality. (*Id.*) Step three asks whether a claimant's impairments meet or equal a listed
19 impairment. The ALJ found that Plaintiff's impairments did not meet or equal the criteria of a
20 listed impairment. (AR 28-30.)

21 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess
22 residual functional capacity (RFC) and determine at step four whether the claimant has
23 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of

1 performing medium work, with additional limitations: he can occasionally climb ladders, ropes,
2 or scaffolds; and cannot have concentrated exposure to extreme cold, wetness, vibration, or
3 hazards. He can perform simple, routine tasks that do not require more than occasional adaptation
4 to changes in the work setting or work process. He cannot interact with the general public or co-
5 workers to perform job tasks. (AR 30.) With that assessment, the ALJ found Plaintiff unable to
6 perform any past relevant work. (AR 39.)

7 If a claimant demonstrates an inability to perform past relevant work, the burden shifts to
8 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an
9 adjustment to work that exists in significant levels in the national economy. With the VE's
10 assistance, the ALJ found Plaintiff capable of transitioning to other representative occupations,
11 specifically industrial cleaner, laundry laborer, and dryer attendant. (AR 40-41.)

12 This Court's review of the ALJ's decision is limited to whether the decision is in
13 accordance with the law and the findings supported by substantial evidence in the record as a
14 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more
15 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
16 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
17 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's
18 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
19 2002).

20 Plaintiff argues the ALJ erred in (1) discounting his subjective statements, (2) discounting
21 the disability rating issued by the U.S. Department of Veterans Affairs (VA), and (3) discounting
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1 certain medical opinions.² The Commissioner argues that the ALJ's decision is supported by
2 substantial evidence and should be affirmed.

3 Plaintiff's subjective testimony

4 The ALJ discounted Plaintiff's subjective testimony because (1) his ankle impairment was
5 not as severe as he alleged, as demonstrated by the objective examination findings as well as his
6 self-reported activities; and (2) his mental impairments were not as severe as he alleged, as
7 demonstrated by many unremarkable mental status examinations and his self-reported activities.
8 (AR 31-35.)

9 Plaintiff argues that these reasons are not clear and convincing, as required in the Ninth
10 Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). Specifically, Plaintiff argues
11 that the ALJ's reasons were "broad and characterological," which violates Social Security Ruling
12 (SSR) 16-3p.

13 The Court disagrees with Plaintiff's characterization of the ALJ's reasoning. The ALJ's
14 reasons were neither inappropriately broad or "characterological": the ALJ identified specific
15 objective evidence and self-reported activities that contradict Plaintiff's alleged limitations. (AR
16 31-35.) Plaintiff argues that the activities cited by the ALJ were not performed in a way that would
17 suggest an ability to work (Dkt. 9 at 13), but that was not the purpose for which the ALJ cited
18 them. The ALJ cited Plaintiff's activities in order to note inconsistencies between Plaintiff's
19 activities and his allegations: for example, the ALJ described Plaintiff's ability to (1) work as a
20 janitor despite a purportedly disabling ankle impairment, (2) play video games for hours at a time
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22 ² Plaintiff's opening brief also challenges the ALJ's RFC assessment, VE hypothetical, and step-
23 five findings, but in doing so only reiterates arguments made elsewhere. Dkt. 9 at 14. Accordingly, these
issues will not be analyzed separately.

1 despite claims of concentration deficits, (3) participate in his wife's daycare business despite
2 allegations of problems being around other people, and (4) participate in many activities outside
3 his home despite his alleged anxiety leaving his house. (AR 31-32.) The ALJ reasonably found
4 Plaintiff's activities to be inconsistent with his allegations, and did not err in discounting Plaintiff's
5 testimony on that basis. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (activities may
6 undermine credibility where they (1) contradict the claimant's testimony or (2) "meet the threshold
7 for transferable work skills").

8 Because the ALJ provided several examples of inconsistencies between Plaintiff's
9 allegations and his activities, the ALJ's findings regarding Plaintiff's subjective testimony are
10 affirmed.

11 VA rating

12 The ALJ noted that Plaintiff had received a VA disability rating based on PTSD (found to
13 be 70% disabling) and his ankle impairment (10% disabling). (AR 37 (citing AR 317-27).) The
14 ALJ also noted that Plaintiff reported to a provider that he was found 100% disabled by the VA.
15 (AR 37 (citing AR 444).)

16 The ALJ gave the VA rating "limited weight[.]" finding the rating regarding Plaintiff's
17 ankle to be inconsistent with the evidence that his activities of daily living and his physical
18 examination findings were "largely intact." (AR 37.) The ALJ also found that the April 2015 VA
19 rating was rendered without access to the entire record available to the ALJ, whose decision was
20 entered in September 2016. (*Id.*) The ALJ found that the VA rating was inconsistent with the
21 record before the ALJ, which contained objective evidence inconsistent with disabling mental or
22 physical limitations and documented that Plaintiff could complete activities inconsistent with
23 disabling limitations. (*Id.*)

1 Plaintiff argues that the ALJ's reasons for discounting the VA rating were insufficient. An
2 ALJ may discount a VA rating if he or she provides "persuasive, specific, valid reasons for doing
3 so that are supported by the record." *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002).
4 The Court disagrees with Plaintiff and finds that the ALJ's reasons are persuasive, specific, and
5 valid.

6 First, the ALJ reasonably found the VA rating regarding Plaintiff's ankle impairment to be
7 inconsistent with normal objective evidence regarding his ankle function. Although Plaintiff
8 asserted in his reply brief that the ALJ did not challenge the VA rating regarding his ankle (Dkt.
9 12 at 7), he is mistaken. (*See* AR 37.) The ALJ cited mostly normal objective findings regarding
10 Plaintiff's ankle, particularly a normal gait and ability to heel-toe walk (AR 490), which contradict
11 the VA rating's indication that Plaintiff had "painful motion of the ankle." (AR 323.)

12 The ALJ also pointed to the discrepancy between the time the VA rating was rendered and
13 the time of the ALJ's evaluation of the evidence, noting that the records subsequent to the VA
14 rating were inconsistent with the VA rating because they indicated that Plaintiff could perform
15 jobs and complete activities inconsistent with his alleged limitations. (AR 37.) Plaintiff disagrees,
16 contending that the record is consistent with his alleged sleep disorders and anger outbursts, and
17 that the normal mental status examinations were not decisive (Dkt. 9 at 11-12), but this argument
18 merely posits an alternative interpretation of the evidence. Plaintiff has failed to show that the
19 ALJ unreasonably found that the record contained evidence inconsistent with the VA's 70% rating
20 for PTSD, and thus has failed to establish error in the ALJ's rejection of the VA rating. *See Cassel*
21 *v. Berryhill*, 2017 WL 6397278, at *2 (9th Cir. Dec. 15, 2017) (finding that the ALJ properly
22 discounted a VA rating where the rating was inconsistent with the claimant's activities and medical
23 records).

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A. Legal standards

Less weight may be assigned to the opinions of other sources. *Gomez v. Chater*, 74 F.3d 967, 970 (9th Cir. 1996). However, “[s]ince there is a requirement to consider all relevant evidence in an individual’s case record,” the ALJ’s decision “should reflect the consideration of opinions from medical sources who are not ‘acceptable medical sources’ and from ‘non-medical sources’ who have seen the claimant in their professional capacity.” SSR 06-03p, 2006 WL 2329939, at *6 (Aug. 9, 2006). “[T]he adjudicator generally should explain the weight given to opinions from these ‘other sources,’ or otherwise ensure that the discussion of the evidence in the determination or decision allows a claimant or subsequent reviewer to follow the adjudicator’s reasoning, when such opinions may have an effect on the outcome of the case.” *Id.*; *see also Smolen v. Chater*, 80 F.3d 1273, 1288-89 (9th Cir. 1996) (holding that an ALJ must provide germane reasons to reject

1 lay testimony).

2 B. Dr. Weiss

3 Dr. Weiss examined Plaintiff in August 2015 and reviewed some of the VA records. (AR
4 473-77.) Dr. Weiss opined that Plaintiff had “some difficulty” with short-term memory, and that
5 his socialization, sustained concentration and persistence, and adaptation were severely impaired.
6 (AR 476-77.)

7 The ALJ gave “limited weight” to Dr. Weiss’s opinion, finding that Dr. Weiss did not state
8 his opinion in terms of specific functional limitations that would be useful in assessing his RFC.
9 (AR 36.) The ALJ also found that Plaintiff reported exaggerated symptoms to Dr. Weiss, and that
10 Dr. Weiss’s conclusions were inconsistent with the “largely unremarkable” mental status
11 examination findings in the record as well as those obtained by Dr. Weiss. (*Id.*)

12 Plaintiff acknowledges that the record contains many normal mental status examinations,
13 but argues that the record nonetheless documents clinical abnormalities such as sleep disorders
14 and anger outbursts. Dkt. 9 at 7. But Dr. Weiss did not attribute Plaintiff’s deficits to sleep
15 disorders or anger outbursts; instead, he performed a mental status examination and asked Plaintiff
16 about his history and activities. The ALJ did not err in considering the extent to which Dr. Weiss’s
17 mental status examination and other mental status examinations of record are consistent with the
18 conclusions reached by Dr. Weiss. *See Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595,
19 603 (9th Cir. 1999) (ALJ appropriately considers internal inconsistencies within and between
20 physicians’ reports).

21 Furthermore, the ALJ found that Plaintiff was able to engage in more activities than
22 reported to Dr. Weiss. (AR 36.) This finding is supported by substantial evidence; as documented
23 by the ALJ, Plaintiff reported an ability to volunteer, participate in his wife’s day care business,

1 and attend public functions. (AR 32-34.) But Plaintiff reported to Dr. Weiss that he avoided
2 socializing. (AR 476.) The inconsistency between Plaintiff's activities and Dr. Weiss's opinion
3 is a specific, legitimate reason to discount Dr. Weiss's opinion. *See Rollins v. Massanari*, 261
4 F.3d 853, 856 (9th Cir. 2001) (affirming an ALJ's rejection of a treating physician's opinion that
5 was inconsistent with the claimant's level of activity).

6 Finally, the ALJ also noted that Dr. Weiss did not express his opinion in terms
7 corresponding to an RFC determination, because he did not identify any particular functional
8 limitations. (AR 36.) This is another specific, legitimate reason to discount Dr. Weiss's opinion,
9 because the opinion has limited probative value for the ALJ's inquiry. *See Morgan*, 169 F.3d at
10 601 ("Substantial evidence supports the ALJ's determination that Dr. Grosscup's reports do not
11 show how Morgan's symptoms translate into specific functional deficits which preclude work
12 activity.").

13 Plaintiff suggests that the ALJ erred in discounting Dr. Weiss's opinion for lack of
14 specificity, arguing that an ALJ "must address an opinion in the terms that it is offered." Dkt. 9 at
15 8 (citing *Desrosiers v. HHS*, 846 F.2d 573, 576 (9th Cir. 1988)). *Desrosiers* is not applicable here;
16 it involves a medical opinion using different definitions of the exertional categories used by Social
17 Security to describe jobs. 846 F.2d at 576. It does not stand for the proposition that an ALJ may
18 not discount a medical opinion that is not stated in terms of an RFC for lack of probative value.

19 Because the ALJ offered multiple specific, legitimate reasons to discount Dr. Weiss's
20 opinion, the Court affirms the ALJ's assessment of Dr. Weiss's opinion.

21 C. Ms. Dennis

22 Ms. Dennis, Plaintiff's treating counselor, completed a checkbox medical source statement
23 in June 2016, rating Plaintiff's deficits in a variety of functional areas. (AR 526-29.) The ALJ

1 found that the “extreme limitations in all categories of mental functioning[.]” as well as the
2 absenteeism and inability to remain on task, described by Ms. Dennis were inconsistent with the
3 normal mental status examination findings in the record and Plaintiff’s own self-reported activities.
4 (AR 36.)

5 Plaintiff argues that the ALJ’s reasons were not germane, but the Court disagrees. Plaintiff
6 again contends that his normal mental status examination findings were not “decisive” because the
7 record nonetheless corroborated his reports of sleep disorders and anger outbursts, but this is
8 merely an alternative view of the evidence that does not establish error in the ALJ’s reasoning.
9 Dkt. 9 at 10.

10 The ALJ also cited Plaintiff’s ability to play video games for up to three hours at a time, as
11 described by Plaintiff and his wife, as inconsistent with the concentration deficits described by Ms.
12 Dennis. (AR 36 (referencing AR 65, 77).) Plaintiff argues that the ability to play video games for
13 three hours at a time is not “comparable to work increments under a minimal performance
14 standard[.]” Dkt. 9 at 10. It is not clear that the concentration required to play a video game is
15 different than the concentration required to perform any work, and even when Plaintiff was
16 working under a minimal performance standard, his employer reported no problems with his
17 performance. (See AR 299-300 (former employer’s report).) The ALJ reasonably found the
18 concentration deficits described by Ms. Dennis to be inconsistent with the record, and the ALJ did
19 not err in discounting the opinion on that basis.

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DATED this 4th day of January, 2018.

Mary Alice Theiler
United States Magistrate Judge